

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 436 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

C. ANANT & CO.

Versus

VIMALSCREE PRINTERY

Appearance:

MR SURESH M SHAH for appellant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/04/99

ORAL JUDGEMENT

Heard Mr.Muhul S. Shah for the appellant.

None appears for the respondent-defendant though served.

2. Although the following four substantial questions

of law were framed, really speaking the appeal can be disposed of by considering questions (c) and (d):

- (a). Whether any part of the suit claim of the plaintiff is time barred ? and whether the suit of the plaintiff for an amount of Rs.4350/- is required to be dismissed as being time barred ?
- (b). Whether the accounts between the parties is open, mutual and current account ?
- (c). Whether the plaintiff is entitled to claim the benefits of Sections 8 and 19 of the Limitation Act ?
- (d). Whether the plaintiff is entitled to claim interest in view of the provisions of Sec. 61(2) of the Sale of Goods Act ?

3. The appellant-plaintiff had filed the present suit on 7-4-1975. The plaintiff had produced accounts from 26-10-1971 onwards. Hence dues from 7-4-1972 were admittedly within the period of limitation. The suit was filed based on account and the defendant had made payments. In para 7 of his deposition the defendant stated as under:

" The relation with plaintiff starts from 1971. The accounts also begin from 1971 with plaintiff. I was giving payments to the plaintiff by cheque or cash. The payment of Rs.1500 was made by cheque. There is also account of mine with other merchants on debit I am not keeping my books of account I am keeping my katcha account."

In view of the above the trial Court further examined the question whether there was one continuing debt or so and found that even if the first debt was time barred it is open to the plaintiff to adjust the amount against the time barred claim. This is known as the rule in Clayton's case. The defendant had made the last payment on 30-4-1974. Hence the trial Court was justified in holding that the plaintiff was entitled to adjust the payment made by the defendant from time to time against the dues commencing from 26-10-1971.

4. In this view of the matter no fault can be found with the view taken by the learned trial Judge. The learned Extra Assistant Judge, Jamnagar substantially erred in law in holding that the plaintiff's claim for a sum of Rs.4350/- was barred by limitation.

5. As far as the question of interest is concerned, the said question pertains to the interest for the period prior to the filing of the suit. Since this issue does not appear to have been argued before the lower appellate Court, it is not permitted to be raised here. Of course the plaintiff has been awarded interest pendente lite at the rate of 6% p.a. from the date of the suit till realization.

6. In view of the above discussion, the appeal is allowed. The judgment and order of the Extra Assistant Judge, Jamnagar in Regular Civil Appeal No.136/78 in so far as it held that the claim for Rs.4350/- was barred by limitation is set aside. The judgment and decree passed by the trial Court is restored in its entirety.

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